

## ADVISORY OPINION 1999-010

**Any advisory opinion rendered by the registry under subsection (1) or (2) of this section may be relied upon only by the person or committee involved in the specific transaction or activity with respect to which the advisory opinion is rendered. KRS 121.135(4).**

September 24, 1999

Representative Hoby Anderson  
Hoby 99  
P.O. Box 905  
Flatwoods, Kentucky 41139

Dear Rep. Anderson:

This is in response to your August 27, 1999 request for an advisory opinion regarding your slate's eligibility for public financing and various issues relating to fundraising for your campaign. Hoby/Ace for the Commonwealth was established on August 3, 1999 to raise and spend funds in support of your slate's campaign for election to the offices of Governor and Lieutenant Governor. You indicate that you have announced your slate's intention to receive write-in votes for the 1999 General Election. The questions posed in your letter and the Registry's responses are as follows:

- (1) As you may know, my running mate and I have formally declared our intentions to run as a write-in slate for the 1999 gubernatorial election. Will we be eligible for public financing under KRS chapter 121A?**

KRS 121A.010(5) defines a "qualifying slate of candidates" for the purpose of receiving transfers from the election campaign fund established under KRS Chapter 121A. The statute provides in pertinent part:

"Qualifying slate of candidates" means any slate of candidates of a political party or any independent nominees for Governor and Lieutenant Governor whose names are qualified to appear jointly on a primary or runoff primary election ballot, or candidates who have filed a notification and declaration pursuant to KRS 118.127 who are authorized by this chapter to receive contributions and make expenditures jointly for the regular election, and one (1) that has otherwise qualified under this chapter to receive a transfer from the election campaign fund, including having raised the minimum threshold qualifying amount. KRS 121A.010(5) (Emphasis added.)

Your slate is neither (1) a slate of candidates that is qualified to appear jointly on the general election ballot under KRS 118.127 nor (2) a slate of candidates that has otherwise qualified under KRS Chapter 121A to receive transfers from the election campaign fund by raising the minimum threshold qualifying amount (\$327,514) and having an opponent that has raised the minimum threshold qualifying amount. The statute specifically requires that a candidate appear on the ballot as a condition precedent to receiving public financing. Therefore, under KRS 121A.010(5), your slate does not constitute a qualifying slate of candidates and is not eligible to receive public financing under KRS Chapter 121A.

**(2) If we are not eligible for public financing are we obligated to abide by other provisions of the public financing laws such as spending limits and the period of time near the end of the campaign when contributions are prohibited?**

Generally, KRS Chapter 121A applies to all slates of candidates for Governor and Lieutenant Governor. However, slates of candidates who elect to accept transfers from the election campaign fund are subject to additional requirements under the chapter.

Under KRS 121A.040(1), nominated slates must file a statement of intent to accept election campaign fund transfers or to reject election campaign fund transfers. As write-in slates of candidates have no requirement to file nomination papers, they have no obligation to file a statement of intent to accept or reject public financing.

While slates that elect to accept public financing agree to limit their campaign expenditures to 1.8 million dollars (adjusted according to the consumer price index to \$1,965,082) in exchange for matching public funds, nonparticipating slates have no expenditure limitations. KRS 121A.030. Likewise, as a nonqualifying slate of candidates that has not filed a statement of intent to accept public financing, you are not bound by the expenditure limit amounts provided under KRS 121A.030.

In addition, under Gable v. Patton, 142 F.3d 940 (6<sup>th</sup> Cir. 1998), KRS 121A.030(5) may not be applied to nonparticipating slates whose candidates wish to contribute personal funds to the campaign during the last twenty-eight (28) days immediately preceding the general election. Again, this prohibition on accepting personal funds during the last 28 days preceding the general election would not apply to your slate.

However, all slates of candidates are required to comply with the following:

- (1) the contribution limits provided under KRS 121A.050, including the prohibition on accepting cash contributions,
- (2) the reporting requirements provided under KRS 121A.020(5), and

(3) the provisions of KRS 121A or regulations promulgated under the chapter that apply to all slates of candidates.

**(3) If we are not eligible for public financing, are we eligible to participate in the televised KET debates mentioned in KRS 121A.100?**

KRS 121A.100(1) requires qualifying slates of candidates to participate in a reasonable number of televised candidate forums or debates managed and designed by the Kentucky Authority for Educational Television (“KET”). The Registry’s authority regarding this forum is solely to determine whether qualifying slates have met this requirement. All decisions regarding these debates specifically adhere to KET. KRS 121A.100(2). KET has promulgated administrative regulations to establish procedures to manage the debates. See 700 KAR 2:210 (attached).

**(4) If we are not eligible for public financing, are we subject to other election finance laws, specifically KRS chapter 121?**

Any provisions of KRS Chapter 121 applying to “candidates” or “slates of candidates” are applicable to your slate, except where they are inconsistent with a provision of KRS Chapter 121A.

**(5) Is it legal for our slate to raise campaign funds by allowing persons to suggest slogans for our slate for a set price with University of Kentucky basketball tickets being the prize for the winning slogan?**

KRS 121.175(1) provides that allowable campaign expenditures are those “made directly and primarily in support of or opposition to a candidate” including expenditures for advertising and campaign paraphernalia. Expenditures of funds that would “bestow a private pecuniary benefit” are not allowable under the statute. Provided an item for auction or raffle was purchased at its fair market value and used to advertise the candidacy of your slate, it would constitute an allowable campaign expenditure. However, Kentucky laws on charitable gaming may govern the fundraising event you propose.

**(6) Is it legal for our slate to sell campaign paraphernalia to raise campaign funds? How should we account for/report cash sales of less than \$50 for T-shirts, posters, hats and other such items that might be sold?**

A slate of candidates may sell campaign paraphernalia, including t-shirts, hats, etc. as a fundraising event. For each sale, the entire cost of the item is considered a contribution to the campaign. KRS 121A.010(11). A slate of candidates may not accept

cash contributions. KRS 121A.050(2). Therefore, campaign paraphernalia must be purchased by check or by a money order that indicates the payor and payee.

**(7) Is it legal for me to establish a company to market campaign paraphernalia and transfer the profits of this company to our gubernatorial slate as a contribution for me personally?**

KRS 121A.070(1) provides that all contributions or personal resources of any slate of candidates to be used for campaign expenditures shall be deposited in the candidate campaign account. The sale of campaign paraphernalia constitutes a contribution under KRS 121A.010(11) and must be deposited into your slate's campaign account.

KRS 121A.010(8) defines campaign expenditures as "lawful expenditures from a candidate campaign account on behalf of a slate of candidates to further its nomination or election to the offices of Governor and Lieutenant Governor authorized by the campaign committee or other authorized individual." Expenditures for campaign paraphernalia and marketing authorized by you that further your election to the office of Governor would constitute campaign expenditures. Therefore, any of your personal resources, including money to produce and market paraphernalia to be used to promote the slate's election to office must be deposited in the campaign account.

Also, note that KRS 121.025 and 121.035 strictly prohibit a corporation from giving anything of value to support or oppose the election of a candidate or slate of candidates. Based on these statutory provisions, you may not establish a separate marketing company, incorporated or nonincorporated, to sell campaign paraphernalia and transfer profits from such a company to the slate's campaign account.

This advisory opinion is based on the circumstances presented in your letter. If you have any additional questions, please do not hesitate to contact the Registry staff. You may direct general fundraising and expense questions to the Registry auditor assigned to your campaign.

Sincerely,

Rosemary F. Center  
General Counsel

RFC/jh